

## Hawaiian Gazette

## SEMI-WEEKLY.

TUESDAY, APRIL 10, 1894.

THE Queen's organ has come out in favor of government "by the people, of the people and for the people." Where does the ex-Queen come in? Is she the People?

THE district clubs of the American Union Party on the island of Hawaii have made a good selection of candidates for the convention. It is pleasant to be informed that peace again reigns between the warring factions in the Hilo district, and that the two clubs will unite upon a candidate.

It is to be hoped that the dissatisfaction among the Molokai natives on account of the inspectors appointed there will be promptly investigated, so that the causes of the complaint, if there be any, may be removed. It would be a great pity if any loyal Hawaiians should fail to register and vote for reasons so trifling as those that exist in the present case.

THE Mauiites have got themselves into a terrible political tangle, so that it is hard to say what clubs will be entitled to representation in the nominating Convention, and what will not. Particulars of the facts will be found in our Maui letter. The natives in the Hana and other districts are registering with gratifying zeal, and are evidently going to take an active part in the coming election.

IN the constitution of the future, the election to the convention formed to frame it will be not unlikely to play as important a part as the first election held under the constitution of 1887. Whatever restrictions may be placed upon the franchise in the future, it is not probable that any of them will apply to those voters who by their votes took an active part in making the constitution. It may be possible, for instance, that international complications may make it necessary to restrict the ballot to citizens. In that case, those residents who are not citizens, but who registered for the election to the convention, might be excepted from the operation of the provision excluding non-residents.

THE childish secrecy observed by royalist leaders as to the mass-meeting at Palace Square last night was simply laughable. No information could be obtained as to who the speakers were to be, and in general those who were supposed to know all things professed to know nothing. In some cases the ignorance may be supposed to have been real, for there were undoubtedly on the list of those calling the meeting the names of persons who had little knowledge of its objects and little sympathy with them. C. W. Ashford, however, must be supposed to have known what it was all going to be about, so that his professions of ignorance must be taken as most of his professions are. Mr. Ashford, however, made a witty speech last night, and in view of it we forgive him his sins.

## INDISCREET ADMISSIONS.

A short time since the Holomua, in an effort to blacken the character of L. A. Thurston, actually condemned the *hula*, and even went so far as to say the Hawaiians were ashamed of it. Now, in the course of an attempt to discredit Dr. Hyde, it has quoted a warm appreciative tribute of Judge Forrester to the missionaries!

If the Holomua does not check its injudicious zeal for controversy, it will soon be possible to cull from its columns an admission of every count in the deadly indictment which the last twenty years have drawn against the Hawaiian monarchy.

The Holomua has a fatal facility in proving too much.

## SIGNS OF THE TIMES.

The world moves on, even in little Hilo. The boarding school has imported an ice machine, with which it will manufacture ice for sale as well as for its own use. We learn also that Judge and Mrs. Austin expect to ride to Kau, via the Volcano, in their own carriage.

The ice and the carriage are both signs of the times on Hawaii. The idea, indeed, of driving all the way from Hilo to Kau almost takes one's breath away. It is a faint promise of the days, surely not far distant, when Hilo will have a breakwater and a wharf, when a railroad will unite it with Kohala, and good carriage roads with every part of the island.

## GOOD NEWS IN PROSPECT.

The intelligence which came by the Monowai regarding the purchases of raw sugar by the Trust in the United States is very significant, and a good omen for Hawaii. It indicates a fixed belief on the part of the Trust that a duty is going to be put on raws which will materially enhance the price. Another despatch states that Congress has abrogated the reciprocity treaties established after the passage of the McKinley bill. Such abrogation will be necessary if a revenue is to be obtained from sugar.

It is not impossible that the Mariposa, which is due from San Francisco next Thursday, will bring news that the United States Government has decided to establish a coaling station at Pearl Harbor, place a duty of a cent a pound on sugar, and repeal the treaties with Spain and all the other sugar-producing countries except Hawaii.

## A ROYALIST PIZZLE.

The mass-meeting last night was an utter failure from the royalist point of view. There was a fair-sized crowd, though not a large one for an out-door meeting, and apparently about half of it was composed of supporters of the Provisional Government, not to speak of a large number of Chinese. There was no enthusiasm, though Mr. Ashford's witticisms were received with as generous an appreciation as they deserved. In these matters, as in love, distinctions of politics, race and religion do not count.

The burden of the song chanted by the speakers in different keys was to the effect that the number of delegates to be chosen by the people should have been larger. In this contention the ADVERTISER agrees with them. They also made the point that the Constitution should be submitted to a vote of the people. It probably will be.

## THE TWO PLATFORMS.

THE ADVERTISER is glad to be assured by Mr. Baldwin, that the incipient political troubles of Maui are pacified. The sentiment of the island is clearly in favor of the platform as originally adopted by the Union party, and it is by this platform that the Maui annexationists prefer to abide. The sole difference between the two platforms as is well known, consists in the labor plank. The American Union plank declares for total exclusion of Asiatics while the other permits their introduction for agricultural purposes only.

Mr. Baldwin claims that planters cannot well stand on a proposition which if carried out might destroy the leading industry of the country. They must know that they can get labor elsewhere before they cut themselves off from the present source of supply.

This is sound doctrine and it has always been admitted by the mechanics and those who have most to fear from Chinese competition. Mr. Emmeluth himself has never objected to the introduction of a limited number of Chinese for plantation purposes, under a statute carefully drawn. Of course, if means can be devised, as we sincerely hope, by which the sugar industry can be carried on by

Europeans, the immigration from the Orient can be suspended altogether.

Eventually, for the sake of party unity, a platform must be reached on which all annexationists and anti-monarchists can stand. Until the session of the Constitutional Convention is at an end, there will be no need of action.

## WILL SWEDS FILL THE BILL.

In another column will be found a letter on the importation of Swedish laborers for plantations. The writer is a Norwegian who has had a large experience with this class of labor in his native country, and his opinion on the subject is worth considering. While everyone feels an instinctive objection to complicating still further the race problem of the islands by the addition of new races, it will be admitted that this objection applies with little force to the Scandinavians, who are of the same blood as the Anglo-Saxons, and share with them to a large extent religion, laws and social ideas and manners. The line of cleavage in Europe is between the Germans of the North and the Latins of the South, and new Germanic elements here, if drawn from a suitable class, would furnish an element of social soundness and political force.

There is more than one man in this community who enjoys special sources of information on the feasibility of obtaining agricultural labor from this direction, and the public would certainly be glad to be put in possession of this knowledge. The subject deserves careful investigation.

## FAREWELL TO ADMIRAL IRWIN.

The people of these Islands sincerely regret the coming departure of Admiral Irwin.

On his arrival here it was generally believed that he had been especially selected to execute what was supposed to be a policy of force which had been adopted by the President of the United States. For some days it was thought that he would, under orders, at any moment put our lives in peril and at the mercy of a restored monarch. During that period his conduct and demeanor were such as to indicate clearly that while perfectly loyal to his own Government he had no wish to execute his orders with undue severity.

Since the period of danger has passed and misunderstanding has been removed we have come to regard the Admiral as one more of those who should be added to the list of American commanders who have brought us the assurance of the friendship of Americans for our people and the Islands.

We believe that it is the opinion of every member of the Provisional Government that he has acted with much tact and discretion in his relations with it.

We shall not forget the Presidential salute lately given on the visit of President Dole to the Philadelphia. Whatever it meant, in the Admiral's mind, we construed it to be an evidence of his goodwill, and that with the smoke of the saluting guns rolling off to sea, passed away forever the only difference which exists between the great Republic, whose force he represents, and the little Republic whose morning star is just rising above the horizon.

As the Admiral goes upon the "retired list," we hope he will regard it, so far as our wishes are concerned, as a gracious retirement, and that in the coming years, whenever he recalls the days when his warship lay abreast of us, and, as we believed, with throttled guns, he will remember that then lay in his heart the sentiment which took Commodore Tatnall to the aid of the crippled British ship, in its fight with the Chinese at the Peiho river—"blood is thicker than water."

The executive committee of the Jockey Club held a meeting yesterday and decided to have races on June 11th. A programme will be arranged at once. It will be submitted to the club at a meeting to be held on tomorrow night, and if ratified it will be published on the following day.

## CORRESPONDENCE.

MR. EDITOR: I am happy to see that at last somebody is thinking of the stout people in southwestern Sweden, as immigrants for this country.

I beg leave to state that I am a Norwegian and have lived about thirty years of my life in a part of Norway, where the principal supply of field laborers is taken just from the Swedes, mentioned by Mr. "T." in the ADVERTISER for the 21st of March, and that I have done a great deal of work with those people.

According to my experience all that Mr. "T." says about Sweden and the Swedes is perfectly correct, so correct that I should take him for a Swede if he had not erred a little about the history of Sweden.

The reason why the last immigration from Scandinavia turned out to be a mistake was, that most of those people were taken from two of the largest cities in Norway. Very few of them were field laborers, some of them were half-educated mechanics, and the rest with a few exceptions were nothing but street-people. Some of the exceptions are still living in this country and do very well. Still if those immigrants were taken from the country around the cities there would not have been many field laborers between them, as the population there principally is engaged in the manufactures if not owners of farm as homestead, and the supply of field laborers comes from Sweden.

Those Swedes are very poor on account of the land being cut up into small homesteads, but they are just as Mr. "T." describes them, and the women are field laborers as well as the men. For work as stripping cane one of those women would do more work than an Asiatic.

Every spring great flocks of those Swedes come to Norway to earn a little money on the farms where they commonly are paid about 30 cents a day and board. If they can make 80 cents and board themselves on job work, as digging ditches or breaking new land, they do well.

In the autumn they go back to join their families and make the improvements they can on their homesteads in the winter time. Those people are never idle. I am of the same opinion as Mr. "T." though, that they ought to be taken right from Sweden and with their families. Not from America and not from the Norwegian railroads either.

## NORWEGIAN.

Makawao, Maui.

## HAWAII.

I. "Let the waters divide," said the Lord in His power,  
"And the firmament be."  
Then rose a white mist like the lily in flower,  
Where Hawaii, set free,  
(With His fire in her heart) stood before Him that hour  
And gathered her islands up out of the sea;  
"As the rose they shall blossom," said He.

II. Be at peace ye proud billows that haste to devour;  
His Beloved is she!  
The rulers that trample the lilies in flower  
And their war-plagues decree,  
If they touch but Hawaii's gold borders shall cower,  
For out of the whirlwind His answer shall be,  
When He spreadeth His light on the sea.

III. O, Hawaii, the sunrise is on thee this hour!  
Be it spoken of thee;  
"She halloweth her beautiful mountains that tower  
Where the swift shadows flee;  
She is white in His sight as a lily in flower;  
As gardens of spices her Islands shall be—  
Most sweet in the midst of the sea!"

AMANDA T. JONES,  
2638 South Ninth street, Lincoln, Nebraska.

## Afraid to Register.

A great many Americans and other foreigners on Kauai whose friendliness to the Government is unquestioned, have declined to register, because they fear that they will lose their right to the protection of their home governments. A. B. Smith of Kapaa, Kauai, who was appointed one of the Inspectors of Election, declined to register on the ground stated, and returned his commission to Minister King.

## The Americans Lead.

Up to Saturday night the voters registered were classified according to nationality as follows:

Natives and half-castes	105
Hawaiian-born foreigners	62
Americans	203
British	94
German	54
Portuguese	63
Others	41
Total	622

In the Supreme Court of the Hawaiian Islands.

MARCH TERM, 1894.

BEFORE JUDD, C.J., BICKERTON AND FLEAR, JJ.

THE PROVISIONAL GOVERNMENT OF THE HAWAIIAN ISLANDS, V. ALOIAU (ch.)

The defendant was found guilty of an offense by a District Magistrate, and received a sentence authorized by law. During the progress of the trial the magistrate erroneously refused certain questions to be asked by defendant's counsel of a witness in order to affect his credibility. After sentence the defendant appealed to the Supreme Court on the point of law—i. e. the refusal of the magistrate to admit the evidence, and asked for his discharge.

Held: The law point sought to be raised is not appealable from the District Court being an interlocutory ruling.

A ruling of law to be thus appealable must be one that is vital to the case and involved in arriving at the final decision.

## OPINION OF THE COURT BY JUDD, C.J.

The defendant was tried and convicted in the District Court of Lihue, Kauai, on the 11th of last January, of the offense of gaming.

During the trial the attorney for the defendant proposed to ask the prosecuting witness on cross-examination, whether he had been convicted of any offense. On objection, the District Judge refused to allow the question to be asked. After conviction and sentence the defendant appealed to this Court on the point of law, "that the defendant's attorney was not allowed to discredit the evidence of the first witness for the prosecution by asking him whether he had been convicted of any offense."

It was clearly erroneous for the District Magistrate to refuse to allow this question to be asked, for the law, (Sec. 57 of the law of evidence p. 377 Comp. Laws) prescribes that "a witness may be questioned as to whether he has been convicted of any indictable or any offense."

The latter part of Sec. 68, Judiciary Act of 1893, provides that an appeal solely upon points of law from a decision of a District Magistrate may be had to the Supreme Court—to be so stated in the notice of appeal.

Counsel for defendant claims that his appeal is in order, being on a point of law the decision being in violation of a statutory right, and that it entitles the defendant to be discharged. Counsel for the prosecution claims that to order a new trial is the most that can be done for the defendant.

The judgment was that the defendant was found guilty and sentenced to pay a fine of ten dollars and three dollars costs. The sentence was legal and far within the maximum fine authorized by statute. (Act 21 of the Prov. Govt. Sec. 10.)

It is contended by defendant's counsel that the sentence was illegal because certain evidence which ought to have been admitted was not admitted, and the excluded evidence might, if admitted, have changed the conclusions of the magistrate. We are unable to agree with the contention of either the counsel for prosecution or for the defendant.

The defendant is not entitled to a discharge on account of this error, since the sentence imposed was legal, the judgment which found the defendant guilty being the only one which the Magistrate could have made upon the evidence adduced, and the sentence being one authorized by the statute. If the sentence was illegal, following *Rex v. Tai Wa*, 5 Haw. 598, we would only have the authority to discharge the defendant because we would not have the power to substitute a legal sentence for one that was illegal, nor send the case back to the District Court in order that it might do so.

The appeal on the point of law in this case is not, in fact, from the decision of the District Court (which, as we have found, is a legal one) but from a ruling made in the progress of the trial, refusing to admit certain evidence.

This is not an appeal such as is contemplated or allowed by our statutes, and is quite novel to us. The defendant's remedy would be by a general appeal to the Circuit Court where the excluded evidence would presumably be admitted, and if not admitted, then exceptions thereto would lie to this Court. If a new trial should be ordered, defendant would go back to the same magistrate, who would admit the previously excluded testimony and yet be free on the whole evidence to come to the same conclusion. It would be different if a new trial was ordered on this ground in a Circuit Court, for then the jury, who are judges of the facts and the credibility of the witnesses, would be a new and different one.

Counsel for defendant argues that inasmuch as Sec. 70 of the Judiciary Act gives express authority to the Supreme Court in case of an appeal from a decision, judgment, order or decree of a Circuit Judge at Chambers, to review, reverse, affirm, amend, modify, or remand for new hearing &c., and as such power is not expressly given by any section of this Act in cases of appeals on points of law from District Courts, therefore such power does not exist, and on account of this error of the District Court the defendant should be discharged as no other course can be followed. The conclusion we have come to

makes it unnecessary to discuss the question whether we have the power to order a new trial in the District Court.

Our view is that as no "exceptions" as such are allowable from a District Court, the "points of law" to be appealable must be such rulings of law as are vital to the case and involved in arriving at the final judgment and not errors in admitting or refusing to admit evidence during the progress of a trial.

The question sought to be presented to us being on the correctness of an interlocutory ruling it cannot be heard upon an appeal from the final decision, since the error alleged was not the basis of or necessarily involved in, nor did it necessarily affect the final decision.

The appeal is dismissed.  
Deputy Attorney General Wilder for prosecution; A. S. Hartwell for defendant.

Honolulu, April 5 1894.

## COURT NOTES.

Argument in the Banning case is still before the Supreme Court, and it will probably be finished today. Mr. Hatch, for the administrator, began his argument yesterday afternoon.

In the matter of the estate of His late Majesty D. Kalakaua the administrator, G. Trouseau, has filed an amended account which accords with the Master's report. Balance to be paid over to the Queen Dowager is over \$5000.

In the matter of the estate of Chas. A. Long, the guardian of the minor children, F. A. Schaefer, has filed an annual account.

H. Waterhouse and A. S. Hartwell, as trustees under the will of the late John H. Wood, have filed a bill in equity praying for a legal construction of the will and for authority to apply the income of the estate in their hands.

Mrs. Irene H. Brown, joined by A. F. Judd as guardian *ad litem* of the two minor children has filed a petition praying for construction of the will of the late Hon. John II. The respondent in this case is the plaintiff's husband, Chas. A. Brown, who it is alleged is incurring a waste of the property which the bill now seeks to put in trust as by the will directed.

The Olowalu Sugar Company has filed an action in ejectment against S. Kaalawa for possession of a piece of land situate in said Olowalu. The plantation also claims damages of \$1000 for wrongful detention.

307

April 9, 1894.

The carelessness exhibited by the San Francisco paper in stealing the glory of the ADVERTISER in republishing a certain illustrated article without giving proper credit, as well as admitting that their facilities for such illustrated work was crude, is on a par with the publication of one of our April 1st ads. by the Coast papers as a bit of news. The exchange editor who should be a careful man as well as a thoughtful one in the matter of credits, was, in both instances, lacking in these essentials. We believe in the motto "Credit to whom credit is due," spot cash in all other cases.

We believe we have the credit of introducing to the people of Honolulu, some articles that have been of the greatest service to them. Notable among these is the Haviland China. People who might never have felt able to own a decorated dinner set have grasped the opportunity we have offered them and bought them in installments. We do not mean the "dollar down and dollar a week" plan, but a dozen plates this week and something else next. This is our installment plan in China ware.

Another article that has paid for itself in installments of fuel is the Fischer Steel Range. Suppose you have been using fuel at the rate of five dollars a month, a Fischer Range will reduce the cost to forty dollars a year, and two years and a half pays you back the money you spent to own one.

The Jones Locked Fence saves you about ten cents on every post you use in fencing and gives you the best fence you ever saw. "Put money in the purse."

THE HAWAIIAN HARDWARE CO.,

307

FORT STREET, HONOLULU.